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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,192	01/13/2000	JACKI MULLER	81000.3000	6962

7590 02/23/2007  
SPECKMAN LAW GROUP  
1501 WESTERN AVENUE  
SUITE 100  
SEATTLE, WA 98101

EXAMINER
PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
1616	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/403,192	<b>Applicant(s)</b> MULLER ET AL.	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 35-73 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 37 and 60-71 is/are allowed.
- 6) ☐ Claim(s) 35,36,38-59,72,73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

- I. Rejection of claims 35,36,38-59 under 35 USC 112, 1<sup>st</sup> will not be maintained in light of amendment filed 11/28/06. Applicant has support for employing "water-base" in the claims since suspension concentrates A-E on pages 8-9 of the specification all contain water.
- II. Rejection of claims 35,36, and 38-59 under 35 USC 103(a) as being obvious over Murphy will be maintained for reason on record and reason as follows. Claims 72 and 73 are added to this rejection.
  - A. Applicant argues:
    1. The instant invention does not contain oil. Murphy teaches oil based compositions rather than water-based compositions as instantly claimed. The instant invention contains ethoxylated castor oil. Examiner has argued that ethoxylated castor oil is an oil. However, Applicant argues that ethoxylated castor oil is not an oil and for this reason instant invention does not contain oil(s). Applicant also provides exhibit B describing the properties of Cremophor EL (an ethoxylated castor oil) as forming a clear solution in water. Base on this property, Cremophor EL would not be considered an oil since oils do not form solutions in water, but instead form a separate layer when mixed with water. In conclusion all of the instant compositions are made without oil.

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2. The adjuvant compositions taught by Murphy include modified organosilicone and an oil carrier as the two main ingredients. The adjuvant compositions were prepared without water. Thus Murphy's adjuvant compositions are oil based.
3. Murphy example compositions do not contain an active (examples 2-6) and therefore it remains unknown whether the spreading effect would have any significant effect on herbicidal activity under practical conditions.

B. Examiner argues:

4. The instant claims employ "comprising" language and therefore the oil(s) as well as other ingredients taught in Murphy are not excluded from the claimed invention. Examiner agrees that ethoxylated castor oil (Cremophor EL) would not be considered an oil since it forms a solution once combined with water. However it is reiterated that the "comprising" language employed in the instant claims does not exclude the presence of oils being employed therein and for this reason the oils taught by Murphy including oil and modified organosilicone would read on the instant claims. With respect to Murphy's examples not containing actives, it is not required that Murphy provide exemplifications of all possible compositions. However, from the reading of Murphy it is suggested that his oil containing compositions can comprise actives such as herbicides

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(desmedipham). See abstract, column 4 lines 7-17. In the absence of unexpected results it would not be believable on its face that the spreading effect would not have any significant effect on the herbicidal activity under practical conditions since Murphy suggests the spreading effect would effect the (pesticidal (herbicidal) activity. In addition, examiner disagrees with Applicant in that Murphy's compositions do not contain water since Example 6 in Murphy employs water for the agricultural oil composition.

III. Claims 37,60-71 are allowable for reason(s) on record in office action dated 6/28/06.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

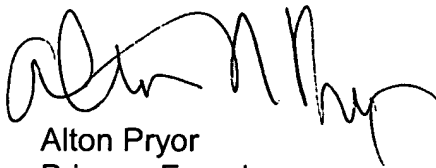
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor  
Primary Examiner  
AU 1616